

Testimony of

# Ms. Katherine M. Cary

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Thank you, Chairman Cornyn and Members of the Subcommittee:

My name is Katherine Minter Cary. I am the Division Chief of the Open Records Division of the Texas Attorney General's Office. Thank you for the high honor of appearing before you today.

First, let me convey for the record Texas Attorney General Greg Abbott's strong support for the bipartisan OPEN Government Act of 2005. Attorney General Abbott agrees with the Father of our Constitution, James Madison, who once observed that "[k]nowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives."

I have both the pleasure and the responsibility of working on a daily basis to apply, educate and enforce one of the strongest, most effective public information acts in the United States. I want to state unequivocally that unfettered access to government is a principled - and an achievable - reality. Texas has over 2,500 governmental bodies scattered throughout the state. But every single working day, the process I oversee succeeds in getting thousands of pieces of information into the public's hands without controversy.

Under the Texas Public Information Act, as under FOIA, requested information is to be "promptly released." Texas law defines this to mean as soon as possible without delay. Any governmental body that wants to withhold records from the public must, within 10 days, seek a ruling from the Texas Attorney General's Office, specifically from my division, the Open Records Division.

In Texas, a governmental body that fails to take the simple but required procedural steps to keep information closed has waived any exceptions to disclosure unless another provision of law explicitly makes the information confidential. This waiver provision - above all else - has provided meaningful consequences to prevent government from benefitting from its own inaction. Under Texas law, if a governmental body - state, county, or local - disregards the law and fails to invoke the provisions that specifically protect certain categories of information from disclosure, it has forfeited its right to use those disclosure exceptions. The OPEN Government Act would institute a very similar waiver provision, and it attempts to strike a careful balance so as not to negatively effect third parties' rights or violate strict confidentiality. The Texas experience shows that finding this balance is realistic, fair and workable.

Our pro-openness system of disclosure has boasted great success and without dire consequences for 32 years and through innumerable high-profile events, including the space shuttle Columbia disaster, the suicide of an Enron executive, the death of 19 immigrants in a heated tractor-trailer in South Texas, and several front-page murder trials. In 1999, governmental bodies in Texas sought roughly 4,000 rulings from the Attorney General. Last year my division issued approximately 11,000. These requests show an increase in compliance that is directly related to outreach and enforcement.

Often, non-compliance results from a simple lack of understanding of the law rather than malicious intent. For this reason, the Texas Attorney General has worked aggressively to prevent violations of the Public Information Act. We offer training, videos, handbooks, and an extensive open government website. Most importantly, we have an open government toll-free hotline that is charged with helping to clarify the law and making open government information readily available to any caller. This service includes updating people on where a request is in the process. The Texas open government hotline answers over 10,000 calls per year. There is no question that the addition of a similar system under the proposed OPEN Government Act would provide citizens with the customer service, attention and access that citizens deserve from their public servants. Our hotline has been a resounding success from the perspective of both requestors and governmental bodies.

My office also has attorneys that handle citizen complaints, as well as respond to questions about the law. These attorneys attempt, with a 99 percent success rate, to mediate compliance with open records regulations. The OPEN Government Act would create a similar system, and Texas' demonstrated success in resolving such matters certainly underscores the utility of such a dispute resolution function.

Our experience has also shown that it requires only a few actions by the Attorney General for word to get out that we are serious about enforcing compliance. I believe that the Office of Special Counsel provisions proposed in the OPEN Government Act will experience the same positive results on the federal level.

Finally, with regard to outsourcing - Texas has a legal presumption that all information collected, assembled or maintained by government or for the government by a third party is open to the public. The OPEN Government Act

would also extend the availability of government records held by non-governmental third parties. Records kept on behalf of Texas governmental bodies remain accessible by request to the governmental body as long as the governmental body enjoys a "right of access" to the information. Moreover, Texas law does not allow the government to contract away access to public records held by its agents.

I believe that this portion of the policy statement that introduces the Texas Public Information Act is instructive:

The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

Our State's experience with openness - its commitment that the people have a right to know, not a mere need to know - has been a Texas-sized success for 32 years. As Attorney General Abbott noted in a recent letter to Senator Cornyn supporting the OPEN Government Act, "open government leads inexorably to good government," and "Openness and accountability - not secrecy and concealment - is what keeps democracies strong and enduring." Thank you again for the privilege of appearing before you today. I would be happy to answer any questions.